



June 19, 2001

Mr. J. Robert Giddings
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR2001-2594

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#148027.

The University of Texas at Tyler (the “university”) received a request for copies of notes and recordings from an investigation conducted by the university’s student newspaper and information regarding stipends received by those involved with the student newspaper. You contend that four issues are raised by the request: (1) whether the student newspaper is a “governmental body” for purposes of the Public Information Act (the “Act”), (2) whether the requested information is “public information” for purposes of the Act, (3) whether the requested information is protected under the First Amendment to the United States Constitution, and (4) whether the requested information regarding stipends is protected under the Family Educational Rights and Privacy Act (“FERPA”) and sections 552.026, 552.101, and 552.114 of the Government Code. We have also received arguments from the university itself and the Student Press Law Center. We have considered all of the issues and arguments raised.

The first issue you raise is whether the university’s student newspaper is a “governmental body” for purposes of the Act. However, we note that the request for information was submitted to the university’s public information coordinator, not the student newspaper. It is not disputed that the university is a governmental body for purposes of the Act. Thus, the issue is whether the requested information is “public information” and thereby subject to the Act. “Public information” is defined under section 552.002 of the Act as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a).¹ You indicate that the requested notes and recordings are produced by student newspaper reporters. According to you, the student newspaper is funded by student fees and "provides an opportunity for journalism students to obtain practical journalism experience while providing news and information to the campus community." You further indicate that the newspaper is published by the university and is generally supported by university facilities and equipment. However, you state that the student editors make most, if not all, of the daily decisions for the newspaper. Under these circumstances, we do not believe that the requested notes and recordings are collected, assembled, or maintained by or for the university. *See id.*; *Yeo v. Town of Lexington*, 131 F.3d 241, 251-55 (1st Cir. 1997) (decision of school newspaper editors was not considered "state action" for purpose of section 1983 claim); *Sinn v. Daily Nebraskan*, 829 F.2d 662, 666 (8th Cir. 1987) (editorial decision by student editors did not constitute "state action"). Rather, it appears that the notes and recordings were produced by private students for the student-run newspaper. Even if we assumed that the notes and recordings were collected, assembled, or maintained for the university as publisher of the newspaper, it does not appear that the university either owns or has a right of access to this information. Gov't Code § 552.002(a)(2). Consequently, we conclude that the requested notes and recordings are not "public information" for the purpose of the Act and thus are not subject to required disclosure under the Act. *See* Gov't Code § 552.002(a); *Yeo*, 131 F.3d 241 at 251-55; *Sinn*, 829 F.2d at 666.

With respect to the requested stipend information, you have submitted a letter from newspaper staff indicating that the newspaper staff does not receive stipends, but scholarships. While the Act does not require a governmental body to make available information that does not exist, the governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975); *see* Gov't Code § 552.353 (providing penalties for failure to permit access to public information). We believe information regarding scholarships received by individuals involved with the newspaper may be responsive to the request. Any information the university possesses concerning scholarships is considered public information subject to the Act. *See* Gov't Code § 552.002(a)(1).

A governmental body may withhold public information from disclosure only if it demonstrates to this office that one of the exceptions listed under subchapter C of chapter 552 of the Government Code applies. *See* Gov't Code §§ 552.027, .301. You indicate that scholarship information, if it is responsive to the request, may be excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. Section 552.026 provides as follows:

¹You appear to argue that the requested notes and recordings are not "public information" because they do not fall under the categories of information listed under section 552.022 of the Government Code. However, section 552.022 does not serve as an exhaustive list of public information. Rather, it lists eighteen categories of public information that generally may be withheld only if confidential by law. *See* Gov't Code § 552.022 (Section 552.022(a) expressly states that it does not limit "the amount or kind of information that is public information under this chapter.").

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Therefore, to the extent any responsive scholarship information contains student identifying information, the information is excepted from disclosure under FERPA and section 552.114 of the Government Code, and the university need not request a decision from this office to withhold the information. To the extent any responsive scholarship information is not protected under FERPA and section 552.114, the university should release the information. *See* Gov't Code §§ 552.021, .301, .302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

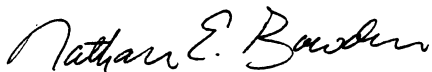
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 148027

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